

**SUPREME COURT OF THE STATE OF WASHINGTON**

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<b>JOHN MILEM, Petitioner,</b>	)	
	)	<b>No.</b> _____
<b>in re 2012 Washington State Redistricting</b>	)	
<b>Plan</b>	)	<b>PETITION FOR</b>
	)	<b>DECLARATORY JUDGMENT</b>
_____	)	

**I. CLAIMS FOR RELIEF**

1. The 2012 Redistricting Plan approved and submitted by the Washington State Redistricting Commission (the “Commission”) pursuant to RCW 44.05.100(1) as amended by the Legislature pursuant to RCW 44.05.100(2) (the “Plan”; see Appendix 1) fails to comply with the provision of the Washington State Redistricting Act (the “Act”; see Appendix 3) which states:

“The number of counties . . . divided among more than one district shall be as small as possible.” RCW 44.05.090(2)(a). For congressional districts, the Plan divides nine counties. On July 29, 2011, Petitioner filed with the Commission two plans (“Petitioner's Congressional Plans”; see Appendices 4 and 5), using two different interpretations of the population standard, one of which divided only three counties and the other, only four counties in forming congressional districts. For legislative districts, the Plan divides 17 counties. On August 15, 2011, Petitioner filed with the Commission two plans (“Petitioner's Legislative Plans”; see Appendices 6 and 7), using two different interpretations of the population standard, one of which divided only 11 counties and the other, only 14 counties in forming legislative districts. The number of counties divided in the Plan is not in compliance with the provisions of the Act.

2. The remaining claims of Petitioner are made more difficult to express with clarity because of three failures of the Commission:

to define terms in the State Constitution (see Appendix 2) and the Act which limit the discretion of the Commission (Petitioner, speaking extemporaneously to the Commission at its public forum in Olympia on May 18, 2011, requested that the Commission make a statement to the public about the extent of its discretion under the Act. The Commission did not respond to this request.);

to conduct its discussions regarding the plans in public meetings, which would have allowed the public to understand the criteria the Commission used in making its decisions; and

to prepare a report (see Appendix 11) containing “an explanation of the criteria used in developing the plan . . . .” RCW 44.05.080(7)(b).

3. The Plan fails to comply with the provision of the Act which states: “The number of . . . municipalities divided among more than one district shall be as small as possible.” RCW 44.05.090(2)(a). For congressional districts, the Plan divides the populations of four municipalities. In Petitioner's Congressional Plans, the population of no municipality was divided. For legislative districts, the Plan divides the populations of 28 municipalities. In Petitioner's Legislative Plans, the populations of only nine and 10 municipalities, respectively, were so divided. The number of municipalities divided in the Plan is not in compliance with the provisions of the Act.

4. The Plan fails to comply with the provision of the Constitution which states that “Each district shall contain a population . . . as nearly equal as practicable to the population of any other district.” Const., Art. II, Sec. 43(5); RCW 44.05.090(1). In the absence of a statement by the Commission as to the meaning of the expression “as nearly equal as practicable”, Petitioner asserts that the words in the statute mean what the U S Supreme Court says they mean and that the words in the Act are there to assure that redistricting plans compliant with the Act will be in compliance with federal constitutional law. In informal discussions with a commissioner, Petitioner has been told that the legislature, although using the exact words of U S Supreme

Court opinions, intended a different meaning. Petitioner has been unable to find any legislative history to support this bizarre notion. At the Commission's public forum in Walla Walla on July 13, 2011, Petitioner specifically addressed this matter in writing (see Appendix 9) with the Commission and requested that the Commission place the issue of the population standard on the agenda for a future meeting and receive public comment regarding it. The Commission did not respond to this request and has not made any official, public statement about the meaning of the expression. Petitioner, as aforesaid, believes that the words in the Act have the same meaning as in U S Supreme Court jurisprudence and that, by that standard, the population deviations among districts must be justified on the basis of "legitimate state purposes". The Commission has not justified the deviations. Therefore, the zero deviation standard must be applied, and the Plan does not meet the zero deviation standard. In Petitioner's Exact Congressional Plan, every district had a population of 672,454. In Petitioner's Exact Legislative Plan, 24 districts had 137,235 people, and 25 districts had 137,236 people. Thus, the Plan is not in compliance with the provisions of the Act in respect of population deviations.

5. The Plan fails to comply with the provision of the Act which states: "District lines should be drawn so as to coincide with the boundaries of local political subdivisions . . . ." RCW 44.05.090(2)(a), restating Const, Art II, Sec 43(5). The Commission has not defined what is a local political subdivision. In any case, the fact that counties and municipalities have been unnecessarily divided as demonstrated above supports a conclusion that boundaries which run through counties and municipalities could have run along their boundaries instead of through

them, thus increasing the coincidence of district boundaries with political subdivision boundaries. Thus, the Plan is not in compliance with the provisions of the Act with regard to the coincidence of district boundaries with the boundaries of local political subdivisions.

6. The Plan fails to comply with the provision of the Constitution which states: “each district . . . shall be . . . convenient” Const, Art II, Sec 43(5); RCW 44.05.090(2)(b) The Commission has failed to define the expression “convenient.” Petitioner asserts that convenience is largely a matter of travel time from place to place within a district. Congressional districts 2, 6, 7 and 8 and legislative districts 13, 14, 19, 20 and 24 are examples of districts which are much less convenient than comparable districts in the plans offered by Petitioner. The Plan is not in compliance with the requirement of the Act that districts be convenient.

7. The Plan fails to comply with the provision of the Constitution which states: “Each district . . . shall be compact . . . .” Const, Art II, Sec 43(5); RCW 44.05.090(2)(b). The Commission has not defined the term “compact.” Congressional districts 1, 2, 4, 7 and 9 and legislative districts 11, 14, 16, 18, 20, 21, 24, 32, 35, 37, and 46 in the Plan appear to be much less compact than comparable districts in Petitioner's Plans. The Plan is not in compliance with the requirement of the Act that districts be compact.

8. The Plan fails to comply with the provision of the Act which reads: “The commission

shall exercise its powers to provide fair and effective representation . . . .” RCW 44.05.090(5).

The Commission has not defined “fair and effective representation.” Petitioner asserts that when the five metropolitan Puget Sound counties (King, Pierce, Snohomish, Thurston, Kitsap) have slightly less than 60% of the population of the state and the Commission has created seven congressional districts out of ten with a majority of their populations in the five metropolitan counties, fair representation is not being provided by the plan to the more than 40% of the population living in the other 34 counties. For 60% of the population, six districts should be created, and for 40% of the population, four districts should be created. Petitioner addressed this issue with the Commission at its public forum in Wenatchee on June 9, 2011 (see Exhibit 8). Petitioner's Congressional Plans created six districts with a majority of their populations within the five counties and four districts with a majority of their populations in the 34 counties. The Commission did not exercise its powers to provide fair representation for the people of the 34 counties outside metropolitan Puget Sound.

9. The Plan fails to comply with the provision of the Act which reads: “The commission shall exercise its powers . . . to encourage electoral competition.” RCW 44.05.090(5). The Commission has not defined electoral competition or what it means to encourage it. Petitioner made a presentation to the Commission on July 14, 2011, at Moses Lake at which he discussed the difficulty in drawing boundaries which were fair between the parties due to the differences in the concentration of the voters of the two parties in the state and concluded that the best solution to this disparity is to maximize the number of competitive districts (See Appendix 10). Petitioner

asserts that the Commission has reduced electoral competition rather than encouraged it. The case of congressional districts 8 and 9 is an obvious example of this. These have been among the most competitive in the state. And they've been relatively close in partisan leaning. Petitioner's descriptors (described in Petitioner's Preferred Congressional Plan statement, pages 9-14; Exhibit 4) for these districts were 3R for district 8 and 0 for district 9, meaning that district 9 generally votes the same as the state and that district 8 generally votes about three percentage points more Republican than the state. In the Plan, the Commission has significantly reduced the potential for electoral competition in these two districts. Petitioner's descriptors for the two districts in the Plan are 7R for district 8 and 8D for district 9. These districts share a fairly long common boundary and the choice of a different boundary between the two could have easily retained or improved the potential for electoral competition in these districts. The Plan fails to comply with the requirement of the Act that the Commission encourage electoral competition.

## **II. REQUEST FOR RELIEF**

Petitioner asks the Court to:

issue a Declaratory Judgment that the the failure of the Plan to comply with the requirements of the Constitution of the State of Washington and the Washington State Redistricting Act constitutes the failure of the Commission to approve a plan within the meaning of the Washington State Constitution and the Washington State Redistricting Act;

adopt a redistricting plan pursuant to RCW 44.05.100(4); and

afford Petitioner such other relief as may be appropriate.

**DATED:** February 8, 2012, in Olympia, Washington

Respectfully submitted,

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Signature

John Milem

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